

# SENATE BILL No. 318

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-11-1; IC 5-11-20.

**Synopsis:** Oversight of public money. Makes the following changes: (1) Provides that instrumentalities of a municipality, local economic development organizations, and certain nonprofit corporations and charitable trusts (municipal benefit entity) are subject to audit by the state board of accounts. (2) Permits a municipal benefit entity that receives public money to substitute an audit by the state board of accounts with a private examiner approved by the state board of accounts. (3) Requires a municipal benefit entity to submit an annual statement of accounts to a municipality contributing public money to the municipal benefit entity. (4) Makes a board member or chief governing officer of a municipal benefit entity personally responsible for recovering and making restitution for unlawful use of or expenditures from public money. (5) Requires salaries and expense reimbursement to board members or the chief governing officer of a municipal benefit entity to be reasonable. (6) Permits the fiscal body of a municipality to limit the amount of public money that may be used to pay the salaries and expenses of a municipal benefit entity's board or governing officer to the amount determined reasonable by the fiscal body.

**Effective:** July 1, 2006.

**Mrvan**

January 10, 2006, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

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Introduced

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## SENATE BILL No. 318

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 5-11-1-7 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2006]: Sec. 7. (a) The state examiner shall  
3 appoint assistants not exceeding the number required to administer this  
4 article. The assistants are to be known as "field examiners" and are at  
5 all times subject to the order and direction of the state examiner. Field  
6 examiners shall inspect and examine accounts of all state agencies,  
7 municipalities, and other governmental units, entities, or  
8 instrumentalities.
- 9       (b) The state examiner may engage or allow the engagement of  
10 private examiners to the extent the state examiner determines necessary  
11 to satisfy the requirements of this article. These examiners are subject  
12 to the direction of the state examiner while performing examinations  
13 under this article. **The state examiner shall permit a municipal**  
14 **benefit entity to engage a private examiner that is approved by the**  
15 **state examiner to satisfy the requirements of this article.**
- 16       (c) The state examiner may engage experts to assist the state board  
17 of accounts in carrying out its responsibilities under this article.

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SECTION 2. IC 5-11-1-9, AS AMENDED BY P.L.4-2005, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. (a) The state examiner, personally or through the deputy examiners, field examiners, or private examiners, shall examine all accounts and all financial affairs of every public office and officer, state office, state institution, and entity.

(b) An examination of an entity deriving:

(1) less than fifty percent (50%); or

(2) at least fifty percent (50%) but less than one hundred thousand dollars (\$100,000) if the entity is organized as a not-for-profit corporation;

of its disbursements during the period of time subject to an examination from appropriations, public funds, taxes, ~~and~~ other sources of public expense, **or other public money** shall be limited to matters relevant to the use of the public money received by the entity.

(c) The examination of an entity described in subsection (b) may be waived or deferred by the state examiner if the:

(1) state examiner determines in writing that all disbursements of public money during the period subject to examination were made for the purposes for which the money was received; ~~However;~~

(2) **entity is not a municipal benefit entity; and**

(3) **entity is not** the Indiana economic development corporation created by IC 5-28-3. ~~and~~

The corporation's funds, accounts, and financial affairs shall be examined biennially by the state board of accounts.

(d) On every examination under this section, inquiry shall be made as to the following:

(1) The financial condition and resources of each municipality, office, institution, or entity.

(2) Whether the laws of the state and the uniform compliance guidelines of the state board of accounts established under section 24 of this chapter have been complied with.

(3) The methods and accuracy of the accounts and reports of the person examined.

The examinations shall be made without notice.

(e) If during an examination of a state office under this chapter the examiner encounters an inefficiency in the operation of the state office, the examiner may comment on the inefficiency in the examiner's report.

(f) The state examiner, deputy examiners, any field examiner, or any private examiner, when engaged in making any examination or when engaged in any official duty devolved upon them by the state examiner, is entitled to do the following:

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(1) Enter into any state, county, city, township, or other public office in this state, or any entity, agency, or instrumentality, and examine any books, papers, documents, or electronically stored information for the purpose of making an examination.

(2) Have access, in the presence of the custodian or the custodian's deputy, to the cash drawers and cash in the custody of the officer.

(3) During business hours, examine the public accounts in any depository that has public funds in its custody pursuant to the laws of this state.

(g) The state examiner, deputy examiner, or any field examiner, when engaged in making any examination authorized by law, may issue subpoenas for witnesses to appear before the examiner in person or to produce books, papers, or other records (including records stored in electronic data processing systems) for inspection and examination. The state examiner, deputy examiner, and any field examiner may administer oaths and examine witnesses under oath orally or by interrogatories concerning the matters under investigation and examination. Under the authority of the state examiner, the oral examinations may be transcribed with the reasonable expense paid by the examined person in the same manner as the compensation of the field examiner is paid. The subpoenas shall be served by any person authorized to serve civil process from any court in this state. If a witness duly subpoenaed refuses to attend, refuses to produce information required in the subpoena, or attends and refuses to be sworn or affirmed, or to testify when called upon to do so, the examiner may apply to the circuit court having jurisdiction of the witness for the enforcement of attendance and answers to questions as provided by the law governing the taking of depositions.

SECTION 3. IC 5-11-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 16. (a) As used in this article, "municipality" means **the following:**

(1) Any county, township, city, town, school corporation, special taxing district, or other political subdivision of Indiana.

(2) **An instrumentality of a municipality described in subdivision (1).**

(b) As used in this article, "state" means any board, commission, department, division, bureau, committee, agency, governmental subdivision, military body, authority, or other instrumentality of the state, but does not include a municipality.

(c) As used in this article, "public office" means the office of any and every individual who for or on behalf of the state or any

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municipality or any public hospital holds, receives, disburses, or keeps the accounts of the receipts and disbursements of any public funds.

(d) As used in this article, "public officer" means any individual who holds, receives, disburses, or is required by law to keep any account of public funds or other funds for which the individual is accountable by virtue of the individual's public office.

(e) As used in this article, "entity" means **the following:**

(1) Any provider of goods, services, or other benefits that is:

~~(1) (A)~~ maintained in whole or in part at public expense; or

~~(2) (B)~~ supported in whole or in part by appropriations, or public funds, or by taxation, or other public money.

(2) A local economic development organization that is not described in subdivision (1).

(3) A nonprofit corporation or charitable trust:

(A) that is not described in subdivision (1) or (2);

(B) that has a principal purpose of making grants to unrelated organizations or institutions or to individuals for scientific, educational, cultural, or other governmental and municipal purposes; and

(C) that is:

(i) maintained in whole or in part at public expense; or

(ii) supported in whole or in part by appropriations, public funds, taxation, or other public money.

The term does not include the state or a municipality ~~(as defined in this section); or a public foundation for a nonpublic school (as defined in IC 20-18-2-12), state educational institution (as defined in IC 20-12-0.5-1), or private institution of higher education (as defined in IC 20-12-63-3).~~

(f) As used in this article, a "public hospital" means either of the following:

(1) An institution licensed under IC 16-21 and which is owned by the state or an agency of the state or one which is a municipal corporation. A hospital is a municipal corporation if its governing board members are appointed by elected officials of a municipality.

(2) A state institution (as defined in IC 12-7-2-184).

(g) As used in this article "local economic development organization" has the meaning set forth in IC 5-28-11-2.

(h) As used in this article, "public money" means the following:

(1) Appropriations of the state or a municipality.

(2) Public funds.

(3) Taxes and other sources of public expense.

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(4) Anything of value derived from any of the following sources to the extent the amount would not otherwise qualify as public money under subdivisions (1) through (3):

(A) An interest in a grant, a gift, a donation, an endowment, a bequest, or a trust that is transferred by a municipality.

(B) An agreement to share tax revenue received by a county or city under IC 4-33-12-6 or IC 4-33-13.

(C) An agreement with a municipality to share or designate the recipient of any payment from:

(i) a licensed owner (as defined in IC 4-33-2-13);

(ii) an operator agent (IC 4-33-2-14.5); or

(iii) a shareholder, partner, or member of a licensed owner (as defined in IC 4-33-2-13) or an operator agent (IC 4-33-2-14.5).

(D) Other funds not generated from a tax.

(E) Assistance or fees described in IC 5-28-15-5.

(i) As used in this article, "municipal benefit entity" refers to the following:

(1) An instrumentality of a municipality described in subsection (a)(1).

(2) An entity described in subsection (e)(2).

(3) An entity described in subsection (e)(3).

SECTION 4. IC 5-11-20 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

## **Chapter 20. Management and Use of Public Money by Municipal Benefit Entities**

**Sec. 1.** This chapter applies only to a municipal benefit entity in a year that the municipal benefit entity receives or holds public money.

**Sec. 2.** As used in this chapter, "contributing municipality" means a municipality that:

(1) gave public money to a municipal benefit entity;

(2) entered into an agreement under which a municipal benefit entity receives public money; or

(3) is a city, town, or county where a zone business (as defined in IC 5-28-15-3) received a benefit that resulted in a fee or assistance that was paid to a municipal benefit entity.

**Sec. 3.** The:

(1) members of the governing body; or

(2) if the municipal benefit entity is not governed by a board,

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chief executive officer;  
of a municipal benefit entity shall annually file a verified written  
certification with each contributing municipality stating that a  
written statement of accounts has been prepared showing at least  
the items listed in section 4 of this chapter. The certification must  
state that the statement of accounts is available to the contributing  
municipality and any member of the public upon request. A  
municipal benefit entity may not be exempted from this  
requirement by a provision in articles of incorporation, bylaws, a  
will, a trust agreement or other organizing agreement, an  
indenture, or another governing instrument. This section does not  
apply to an organization that is not required to file a federal  
information return under Section 6033(a)(2)(A)(i) or Section  
6033(a)(2)(A)(ii) of the Internal Revenue Code. The written  
statement of accounts must be signed under penalty of perjury by  
each of the individuals described in subdivision (1) or (2), as  
appropriate.

Sec. 4. A verified written statement of accounts filed under  
section 3 of this chapter must show the following:

- (1) The period covered by the account.
- (2) The amount of public money held by the municipal benefit  
entity according to the last preceding written statement of  
accounts or the original amount received if there is no  
preceding statement.
- (3) An itemized schedule of all public money received and  
disbursed, distributed, or otherwise disposed of during the  
period.
- (4) The balance of all public money remaining at the close of  
the period, how the public money was invested, and both the  
inventory and current market values of all the investments.
- (5) A statement that the municipal benefit entity has been  
administered according to all laws and any articles of  
incorporation, bylaws, wills, trust agreements or other  
organizing agreements, indentures, and other governing  
instruments governing the municipal benefit entity.
- (6) A statement that all public money was held, invested, and  
expended according to all laws and other conditions  
applicable to receipt of the public money.
- (7) The business addresses, if any, or the residence addresses  
of all the members of the governing board for the municipal  
benefit entity.
- (8) The compensation received in the period by:

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- (A) each member of the governing board; or  
 (B) if the municipal benefit entity is not governed by a board, the chief executive officer;  
 of the municipal benefit entity.

**Sec. 5. The:**

- (1) members of the governing body; and  
 (2) if the municipal benefit entity is not governed by a board, the chief executive officer;  
 of a municipal benefit entity are jointly and severally liable to a contributing municipality to reimburse the contributing municipality for any public money that is not held, invested, or expending in conformity with all laws and other conditions applicable to receipt of the public money.

**Sec. 6. Unless otherwise restricted by law, section 8 of this chapter, or the terms under which money is received by a municipal benefit entity:**

- (1) a member of the governing body; and  
 (2) if the municipal benefit entity is not governed by a board, the chief executive officer;  
 of a municipal benefit entity are entitled to reasonable compensation from public money for the services provided in the management and use of public money. Compensation from public money may not exceed the amount that is reasonable relative to the duties performed with respect to the public money.

**Sec. 7. Unless otherwise restricted by law, section 8 of this chapter, or the terms under which money is received by a municipal benefit entity:**

- (1) a member of the governing body; and  
 (2) if the municipal benefit entity is not governed by a board, the chief executive officer;  
 of a municipal benefit entity are entitled to reimbursement out of public money for reasonable expenses that were properly incurred in the management and use of public money. Reimbursement from public money may not exceed the amount that is reasonable relative to the duties performed with respect to the public money.

**Sec. 8. (a) This section applies only to a city, town, or county.**

**(b) The fiscal body of a contributing municipality may, by ordinance, limit the amount of public money attributable to the municipality, an agreement entered into by the municipality, or a zone business (as defined in IC 5-28-15-3) in a district or zone established by the municipality that may be used as compensation to or reimbursement of expenditures of:**

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1           (1) a member of the governing body; and  
 2           (2) if the municipal benefit entity is not governed by a board,  
 3           the chief executive officer;

4           of a municipal benefit entity in the amount that the fiscal body  
 5           determines to be reasonable. An ordinance adopted under this  
 6           section applies only to compensation and expense reimbursements  
 7           payable after the later of the date the ordinance is finally adopted  
 8           or the date specified in the ordinance.

9           Sec. 9. A contributing municipality may enforce this chapter.

10          SECTION 5. [EFFECTIVE JULY 1, 2006] IC 5-11-1-7,  
 11          IC 5-11-1-9, and IC 5-11-1-16, all as amended by this act, and  
 12          IC 5-11-20, as added by this act, apply only to a financial  
 13          accounting period beginning after June 30, 2006.

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